

Melissa Young, Esq.
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Dear Ms. Young:

Thank you for your letter to Administrator Whitman of February 5, 2001, which she has referred to me for an answer.

You explained that a marketer was notified by an Environmental Protection Agency (EPA) inspector that her facility, which is below the 42,000 gallon underground storage tank threshold capacity, would need a Spill Prevention, Control, and Countermeasure (SPCC) Plan, because she parks her 2,500 gallon cargo tank motor vehicle at the facility in the evenings. You noted that it is used to deliver petroleum products in commerce, not as a mobile fueling facility and that it is emptied before it is parked for the evening.

EPA presumes that a cargo tank motor vehicle that contains no oil, other than any residual oil present in an emptied vehicle when it is parked at the facility in the evening, is a highway vehicle used for the transport of oil in interstate or intrastate commerce, and is therefore transportation-related, and not subject to SPCC jurisdiction. 40 CFR 112, Appendix A, Section II(2)(D). You should be aware, however, if the vehicle were to be used at any time in a fixed operating non-transportation mode, such as the storage or transfer of oil in any amount, other than any residual oil present in an emptied vehicle at the end of the day, then it would become subject to the SPCC rule if there were a reasonable possibility of discharge from the vehicle to navigable waters or adjoining shorelines. See 40 CFR 112.3(c); and 40 CFR 112, Appendix A, Section II(1)(F).

To determine if a fixed operating non-transportation mode has begun, and therefore EPA SPCC jurisdiction arises, an EPA inspector would will look at all the circumstances at a particular facility. Here, such circumstances might include whether the vehicle is functioning as a storage tank, supplementing storage capacity or transferring oil at the facility. We believe the vehicle you described is operating in a transportation-related mode, and therefore, no EPA SPCC regulatory jurisdiction arises. We note that if the vehicle itself were to be subject to the SPCC rule, it exceeds the SPCC regulatory threshold regardless of any other storage or use of oil at the facility. We also note that if it is used for the transport of oil exclusively within the confines of a facility and is not intended to transport oil in interstate or intrastate commerce, it may be subject to the SPCC rule. 40 CFR 112, Appendix A, Section II(1)(J).

Again, thank you for your letter. Please do not hesitate to contact us again if you have other questions concerning EPA's oil program. If you have any questions

about this letter, please contact Hugo Fleischman at 703-603-8769 or Mark Howard at 703-603-8715.

Sincerely,

Stephen F. Heare, Acting Deputy Director,
Office of Emergency and Remedial Response

cc: Clifford J. Harvison, NTTCC
James Malcolm, MC 2131
Susan Gorsky, DOT